X. CONSULTATIVE REPORT ON PUBLIC INTEREST

This portion of the report addresses issues concerning the Public Interest. The record on these issues was developed through workshops and written filings including testimony, comments and briefs. The NDPSC also held a formal hearing on the issues.

On October 15, 2001, the NDPSC issued a Notice of Hearing to consider unresolved issues related to the Public Interest issue. The hearing was scheduled for November 8, 2001. The hearing was subsequently continued at the request of AT&T and rescheduled for January 28, 2002. A formal hearing was held as scheduled commencing on January 28, 2002, in the NDPSC hearing room, State Capitol, 12th Floor, Bismarck, North Dakota.

On November 30, 2001 Touch America, Inc. filed comments on the public interest issue. On January 11, 2002 Qwest filed a Motion to Strike Comments of Touch America, Inc. On January 25, 2002 Touch America filed a Reply to Qwest's Motion to Strike Comments of Touch America, Inc.

Qwest appeared at the January 28, 2002 hearing and presented testimony and evidence in support of its position and the facilitator's Public Interest Report. Qwest also renewed its motion to strike the testimony submitted by Touch America, Inc. The NDPSC ruled at the hearing that Touch America's testimony would not be received as evidence but would be placed in the NDPSC's public input file along with any other comments received from nonparties. Although AT&T appeared at the hearing on QPAP issues it did not present testimony or argument regarding the Public Interest issues.

On February 14, 2002, Qwest filed a Post-Hearing Memorandum on Public Interest Issues. On February 15, 2002, AT&T filed a Reply to Qwest's Post-Hearing Memorandum on Public Interest Issues. On February 25, 2002, Qwest filed a Motion for Leave to File Response to AT&T's Reply on Public Interest Issues and Qwest's Response to AT&T's Reply to Qwest's Post-Hearing Memorandum on Public Interest Issues.

On March 6, 2002, AT&T filed an Offer of Supplemental Authority Regarding Public Interest and included a copy of a February 22, 2002 recommended decision of Administrative Law Judge Mihalchick, for the Minnesota Public Utilities Commission. On March 15, 2002, Qwest filed a Response to AT&T's Offer of Supplemental Authority Regarding Public Interest. On April 1, 2002, AT&T filed a Reply to Qwest's Response to AT&T's Offer of Supplemental Authority Regarding Public Interest.

On March 21, 2002, Qwest filed a Statement of Supplemental Authority Regarding the Public Interest and included a copy of the Order on Staff Volume VII Regarding Section 272, the Public Interest, and Track A issued on March 15, 2002 by the Chairman of the Colorado Public Utilities Commission, who is the Hearing Commissioner in charge of the section 271 docket in that state.

On May 14, 2002 AT&T filed a Motion to Reopen Proceedings in the NDPSC's 271 investigation in order to allow the admission of additional evidence relating to certain unfiled, secret agreements between Qwest and some new entrants. AT&T alleges such agreements represent Qwest's violation of 47 U.S.C. §§ 251 and 252 and Qwest engaged in anticompetitive and discriminatory conduct because the terms and conditions set forth in these agreements was available only to the party CLEC and not to other CLECs. On June 6, 2002 the NDPSC denied AT&T's motion to reopen proceedings in the 271 investigation and stated that further investigation or proceedings, if any, relating to the issues raised by AT&T concerning unfiled interconnection agreements be held in a separate docket under the provisions of 47 U.S.C. §§ 251 and 252 and in accordance with future direction from the FCC.

On May 16, 2002 Qwest filed a revised Exhibit A to the North Dakota SGAT – Fifth Revision dated March 15, 2002 setting forth new, lower rates for certain UNEs. On June 5, 2002 the NDPSC acknowledged the revised SGAT Exhibit A and allowed the rates to go into effect on June 7, 2002.

The following is the NDPSC's Consultative Report on Public Interest issues.

A. Background

In addition to the Competitive Checklist items enumerated at 47 U.S.C. § 271(c)(2)(B), the Telecommunications Act requires an applicant to show that "the requested authorization is consistent with the public interest, convenience, and necessity." 47 U.S.C. § 271(d)(3)(c). The FCC has emphasized that public interest is a separate inquiry from that to be occasioned by the competitive checklist, and addresses this matter separately in its decisions.[147]

The FCC has said that compliance with the competitive checklist provides a strong indication that long distance entry is consistent with the public interest.[148] Checklist compliance, however, is not conclusive as to the public interest requirement.

The FCC's SBC Kansas/Oklahoma Order provides a discussion of the factors to be considered in addressing Public Interest:

> "[W]e view the public interest requirement as an opportunity to review the circumstances presented by the applications to ensure that no other

[147] Memorandum Opinion and Order, *Joint Application by SBC Communications, Inc., Southwestern Bell Telephone Co., and Southwestern Bell Communication Services, Inc. d/b/a Southwestern Bell Long Distance for provision of In-Region, InterLATA services in Kansas and Oklahoma*, 16 FCC Rcd 6237, ¶273 (2001) "SBC Kansas/Oklahoma Order."

[148] SBC Kansas/Oklahoma Order at ¶266.

relevant factors exist that would frustrate the congressional intent that markets be open, as required by the competitive checklist, and that entry will therefore serve the public interest as Congress expected. Among other things, we may review the local and long distance markets to ensure that there are not unusual circumstances that would make entry contrary to the public interest under the particular circumstances of these applications. Another factor that could be relevant to our analysis is whether we have sufficient assurance that markets will remain open after grant of the application. While no factor is dispositive in this analysis, our overriding goal is to ensure that nothing undermines our conclusion, based on our analysis of checklist compliance, that markets are open to competition."[149]

B. Analysis of Evidence

1. UNE Prices

Checklist item 2 of section 271 states that a BOC must provide "nondiscriminatory access to network elements in accordance with sections 251(c)(3) and 252(d)(1)" of the Act.[150] Section 251(c)(3) requires local incumbent LECs to provide "nondiscriminatory access to network elements on an unbundled basis at any technically feasible point on rates, terms, and conditions that are just, reasonable, and nondiscriminatory."[151] Section 252(d)(1) requires that a state commission's determination of the just and reasonable rates for network elements shall be based on the cost of providing the network elements, shall be nondiscriminatory, and may include a reasonable profit.[152] Pursuant to this statutory mandate, the Federal Communications Commission has determined that prices for unbundled network elements (UNEs) must be based on the total element long run incremental cost (TELRIC) of providing those elements.[153]

AT&T contended that recurring and nonrecurring UNE prices exceed Qwest's retail rates, which causes the failure of Qwest's retail markets to be open to competition.

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149 SBC Kansas/Oklahoma Order at ¶267.

150 47 U.S.C. § 271(B)(ii).

151 47 U.S.C. § 251(c)(3).

152 47 U.S.C. § 252(d)(1).

153 *Local Competition First Report and Order,* 11 FCC Rcd at 15844-46, paras. 674-679; 47 C.F.R. §§ 51.501 *et seq. See also In re Deployment of Wireline Services Offering Advanced Telecommunications Capability, CC Docket No. 98-147, and Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, CC Docket No. 96-98,* Third Report and Order and Fourth Report and Order, 14 FCC Rcd 20912, 20974, para. 135 *(Line Sharing Order)* (concluding that states should set the prices for line sharing as a new network element in the same manner as the state sets prices for other UNEs).

Said another way, AT&T alleges that so long as Qwest's wholesale prices for network elements exceed the retail prices available to Qwest's retail customers, it will be impossible for CLECs to compete. The Commission notes that, for approximately 198,000 of 227,321 access lines in Qwest's service area in North Dakota, Qwest's deaveraged UNE price is below Qwest's residential service price.

AT&T cited a state-by-state comparison of 1FR rates against established wholesale prices in support of its position. AT&T said this comparison shows that local entry is unprofitable on its face at prevailing UNE prices. The NDPSC recently reviewed, in its Case No PU-314-99-119 Qwest's prices for residence telephone service in North Dakota and determined, on September 20, 2000, that a price of $17.76 per month does not exceed the average cost of local residential service provided by U S WEST in North Dakota, as calculated under a representative embedded cost methodology, including shared and common costs. Qwest's current 1FR prices reflect Qwest's embedded cost of providing 1FR service (U S WEST Communications, Inc., SB 2420 Residential Price Changes, Case Nos. PU-314-99-119 and 284).

On May 16, 2002 Qwest filed a revised Exhibit A to the North Dakota SGAT – Fifth Revision dated March 15, 2002 setting forth lower rates for unbundled loop recurring charges. Qwest's UNE monthly prices for a Zone 1, Zone 2, and Zone 3 two-wire unbundled loop are proposed at $14.78, $24.92, and $56.44 respectively. The NDPSC acknowledged the revised SGAT Exhibit A and allowed the rates to go into effect on June 5, 2002 as provided for under Section 252 (f) of the Telecommunications Act of 1996.

Qwest states that the FCC has already determined that the ability of CLECs to profit after leasing UNEs is irrelevant. The only test is whether the prices for UNEs are cost based.

The facilitator determined that the issue of whether UNE pricing meets the standards of the Act remains one for the states to address through some other means. The facilitator further determined that AT&T's argument that the 1FR rate comparison demonstrates that Qwest's local markets are closed to competition is not persuasive for many reasons. First, it fails to recognize local rates consist of much more than the basic monthly charge for service. Vertical features and intrastate toll and access charge revenues must also be considered. Second, AT&T's analysis did not consider the existence of resale as an option for certain service classes that do not lend themselves to economical competition through the use of UNEs. Third, AT&T provided no evidence of business rates. Fourth, AT&T did not address the issue of what subsidies might be available to it in the event that it should serve qualifying residential lines through *facilities* based competition.

The facilitator concluded that the revenue analysis presented by AT&T was incomplete and therefore of inconsequential value in assessing the state of local markets in Qwest's local exchange serving areas. Moreover, the FCC has held that the

Act requires a review of whether rates are cost based, not whether a competitor can make a profit by entering the market.[154]

The NDPSC agrees with the facilitator's determination.

a. *Calculation of Current Wholesale Rates*

Qwest's current wholesale rates in North Dakota were developed through arbitration between AT&T and U S WEST and the arbitrated interconnection agreement was approved by the NDPSC in Case No. PU-453-96-497.

AT&T calculated wholesale discount rates base on three versions of its Simplified Avoided Cost Study (SAC), which develops a wholesale rate by determining the amount of avoided costs that will reasonably be avoided by U S WEST in a wholesale business environment and divides the avoided costs by revenues. The facilitator determined that all AT&T's SACs were embedded cost studies.

U S WEST provided an avoided cost study based on Total Element Long Run Incremental Costs (TELRIC) and also provided an avoided cost study based on embedded costs. U S WEST divided its services into six product categories in both studies, identified all retail elements in each category, determined the avoided retail costs for each category, and determined a wholesale discount for each category in each of the two studies.

The Arbitrator had a number of problems with both AT&T and U S WEST studies (p41), and did not agree with either party's proposed rates (p42). The Arbitrator was of the opinion that AT&T's proposed discount rate overstates the avoided cost while U S WEST understates it. For the interim, the Arbitrator used AT&T's proposed rates with some adjustments.

b. *Pricing of Unbundled Network Elements and Cost Methodology*

Qwest's current UNE prices in North Dakota, with the exception of deaveraged 2-wire unbundled loop UNE prices in this report, were developed through arbitration between AT&T and U S WEST and the arbitrated interconnection agreement was approved by the NDPSC in Case No. PU-453-96-497.

AT&T proposed using the Hatfield Model Version 2.2, Release 2 for determining U S WEST's TELRIC in North Dakota. AT&T contends the Hatfield Model uses the best technology, least cost, and long run incremental costs in developing its estimate of TELRIC. U S WEST proposed using the RLCAP model to provide estimates of the costs of unbundled loops, unbundled ports, and other network features. U S WEST used its existing network to model its TELRIC.

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[154] SBC Kansas/Oklahoma Order at ¶92.

U S WEST contended that the Hatfield Model is unreliable because it uses unrealistic inputs and algorithms. U S WEST argued that AT&T made incorrect assumptions and thus used incorrect inputs for sharing, depreciation rates, placement costs, distribution lines, DS1 service and DS3 service loops, and cost of capital. In addition U S WEST argued that there are over 400 inputs in the Hatfield Model that had not been specifically tailored to the North Dakota experience and that the cost of the drop and the NID is understated; the overhead factor is improperly reduced; the network operations factor is arbitrarily reduced; and the tax factor is incorrect.

AT&T contended that the RLCAP model is based on inaccurate engineering assumptions and included costs of unnecessary facilities and is not specific to North Dakota. AT&T argued the RLCAP problems result from 1) failure to include appropriate mix in easy/difficult placement mix; 2) inappropriate buried cable placement cost; 3) planning fill factor that is too low; 4) annual cost factor that is too high; 5) facility lives that are too short; and 6) a cost of money that is too low.

The Arbitrator determined that, because of the limited time to review the studies and because the NDPSC had opened a proceeding specifically for the review of U S WEST cost studies, he would not adopt any one specific TELRIC method in the arbitration proceeding. (p. 72). Though the Arbitrator had not adopted a specific TELRIC methodology, the Arbitrator utilized the Hatfield Model to develop interim prices for unbundled network elements. The Arbitrator used the Hatfield Model cost estimates for the base line and adjusted these estimates using certain U S WEST assumptions for inputs in the Hatfield Model that the Arbitrator believed were appropriate. The Arbitrator required that AT&T recalculate the Hatfield model using some of U S WEST's assumptions and the results of the recalculation would serve as the interim TELRIC in North Dakota.

On January 8, 1997, the NDPSC opened Case No. PU-314-97-12 to determine the permanent rates for unbundled network elements. No permanent rates were determined in that proceeding.

On May 14, 1997, the parties filed an Interconnection Agreement that incorporated the Arbiter's findings. The NDPSC adopted the Arbitrator's decision without modification on June 23, 1997. The NDPSC found that "the prices set forth in the Agreement have not been shown to violate 252(d) of the Act. The prices set in the Agreement shall be used as interim prices, subject to true up upon the completion of the Commission's cost study for U S WEST..."

On July 23, 1997, U S WEST filed with the United States District Court for the District of North Dakota Southwestern Division a Complaint for declaratory and injunctive relief from the NDPSC's order adopting the Arbitrator's decision and Interconnection Agreement. U S WEST stated in part that "the rates adopted in the arbitration at issue in this Complaint are interim rates until the final prices and discounts are established in the separate PSC proceeding." "The Agreement contains prices for unbundled network elements that fall short of allowing U S WEST to recover its costs. Further, it contains an average wholesale discount rate to be applied to U S WEST's sale of wholesale services that will prevent U S WEST from recovering its costs." "In each instance, the prices and rates at issue do not allow U S WEST to recover the actual costs it incurred to build its North Dakota network and are directly contrary to the statutory pricing mandates of the Act. Further, the pricing provisions were not supported by the evidence presented in the arbitration and are unlawful. Nonetheless, because the prices for unbundled network elements and discounted wholesale services are interim prices pending the completion of the NDPSC's pending interconnection cost docket, U S WEST is not challenging those prices in this Complaint except as set forth below."

c. Deaveraging the Price of the 2-wire Unbundled Loop UNE

Also in Case No. PU-314-97-12, the NDPSC considered the deaveraging of the existing interim prices of unbundled network elements. The Commission determined that only the 2-wire unbundled loop UNE would be deaveraged since it is the most significant portion of the total cost of providing local telephone service and because it is the UNE with the most significant variance in cost.

U S WEST proposed three deaveraged price zones consisting of wire centers grouped by community of interest.

AT&T proposed to assign wire centers to one of three cost zones based on the relative cost differences between wire centers for the unbundled loop. AT&T advocated the use of the HAI model to determine the relative cost difference between wire centers which would be applied to the established statewide average loop cost to determine UNE loop prices for three deaveraged zones. Wire centers with similar costs would be aggregated into each zone.

Results of the Synthesis Model were also considered as a guide to deaveraging into rate zones.

Consolidated Communications Networks, Inc. (CCNI) expressed its concern that AT&T's proposal would increase CCNI's rates to its customers and would stifle growth. CCNI alleged that the result of AT&T's proposal would be that competition would be limited to business customers only, outside of the three large cities.

The parties offered a stipulation setting forth stipulated interim prices for the 2-wire unbundled loop UNE for three groupings of wire centers. The stipulation did not adopt or recognize any particular costing methodology or price deaveraging mechanism.

The NDPSC accepted the stipulation on an interim basis. The NDPSC also found that additional investigation is needed to determine the appropriate methodology and alternatives to develop a permanent price for geographically deaveraged unbundled network elements.

Case No. PU-314-97-12 was closed on March 28, 2001. There were no further determinations concerning the prices for interconnection, network elements or resale services.

d. Revised SGAT Rates / Benchmark Prices

On May 16, 2002 Qwest filed a revised Exhibit A to the North Dakota SGAT – Fifth Revision dated March 15, 2002 setting forth lower rates for end office call termination recurring charges, tandem switching recurring charges, unbundled loop recurring charges, loop installation nonrecurring charges, 2-wire distribution subloop recurring charges, DS1 capable feeder subloop recurring charges, line sharing recurring charge, shared transport recurring charge, local tandem switching recurring charge, local usage recurring charge, and enhanced extended loop (EEL) recurring charges. The NDPSC acknowledged the revised SGAT Exhibit A and allowed the rates to go into effect on June 7, 2002 as provided for under Section 252 (f) of the Telecommunications Act of 1996.

e. New Cost Proceeding

On July 7, 2001, Qwest petitioned the NDPSC to open a proceeding to review Qwest's prices for interconnection, network elements and resale services as set forth in Qwest's SGAT. On July 10, 2001, the NDPSC granted Qwest's petition and opened an investigation. Qwest asks the NDPSC to determine 1) whether its prices for interconnection are just, reasonable and nondiscriminatory based on total element, long run incremental costs including a reasonable profit; 2) whether its wholesale prices for resale services are based on retail rates excluding any portion thereof attributable to marketing, billing, collection and other costs that will be avoided by Qwest; and 3) whether companies subject to existing interconnection agreements with Qwest containing interim prices established in the AT&T Interconnection Arbitration, Case No. PU-453-96-497, be required to "true-up" revenues based upon prices approved in this proceeding. Qwest proposes prices based on the use of its Integrated Cost Model ("ICM") and other cost models.

The NDPSC will establish a procedural schedule in the new cost investigation in the near future.

2. Intrastate Access Charges

AT&T testified that Qwest's intrastate access charges in the seven participating states range from 1.25 to 4.91 cents per minute, while the FCC has established rates at 0.55 cents per minute as a cost based target for interstate access rates. AT&T argued that Qwest's intrastate access rates, priced significantly above cost, provide it with a source to subsidize its other products and services. Were Qwest to enter the interLATA long distance market without first moving its access charges close to cost, it would be able to bundle its local service with a long distance offering then set its interLATA rates close to its price for switched access, and literally squeeze competitors out of *both* the local and long distance markets. The result, rather than fostering and encouraging competition, will be the remonopolization of the local and long distance markets.

Qwest said it is sufficient that its 272 interLATA affiliate pay the same access rates as Qwest charges to competitors.

The facilitator noted that since the adoption of the Telecommunications Act of 1996, there has been recognition that the introduction of competition and the maintenance of rates substantially in excess of costs would be problematic. The challenge has been to assure that those "subsidies" that remain important are structured in a way that makes them more compatible with competitive pricing. The facilitator observed that an examination of how intrastate costs are recovered and how any added margins are distributed is self-evidently critical to assuring that undesirable barriers to competition are avoided. The facilitator left to the participating commissions an analysis of how far they feel their states have come in leveling the competitive playing field in a manner they consider to be consistent with public policy in their jurisdiction.

North Dakota law classifies intrastate switched access as an essential service, while special access (aka private transport) is classified as a nonessential service. North Dakota law provides a rebuttable presumption that prices, for essential services, that were in effect on July 1, 1989 are fair and reasonable and became subject to N.D.C.C. § 49-21-06. Prices for essential services on July 1, 1989 became subject to price factor regulation.

Effective August 1, 1999 Qwest raised residence rates to $15.50 per month as allowed under North Dakota Senate Bill 2420 and reduced switched access rates and intraLATA toll rates to offset the revenue increase from increased residence rates. The same statute authorized Qwest to raise residence rates to approximately $18.00 per month effective July 1, 2000 with an offset to the revenue increase through reductions in switched access rates and intraLATA toll rates. This statute resulted in approximately 40 percent reductions in Qwest switched access prices during 1999 and 2000.

Qwest argues that, to the extent Qwest's intrastate access charges or other retail prices exceed Qwest's cost of providing those services, those prices provide an opportunity for CLECs to compete in the local market profitably while providing competitive pressure on Qwest's prices.

The NDPSC agrees with the facilitator's conclusion and finds that North Dakota has made substantial progress in leveling the competitive playing field in a manner that is consistent with the public policy of this jurisdiction as established by the North Dakota Legislature.

3. Post-Entry Assurance Plan

A number of participants addressed the need to assure there exists a sound performance assurance plan.

Qwest's Performance Assurance Plan (QPAP), with changes recommended by the facilitator and/or the NDPSC in another part of the NDPSC consultative report to the FCC, will provide incentives to assure that Qwest's local exchange markets remain open after it may receive 271 approval from the FCC.

4. Lack of Competition

The New Mexico Advocacy Staff argued that Qwest's New Mexico local market has not been shown to be open due to the lack of competition in sizeable amounts. Other parties made similar arguments citing the same evidence that was examined in considering satisfaction of Track A requirements.

The facilitator observed:

> "We must be careful not to confuse the issue of whether the door to the 'room' where CLECs will compete is open with the issue of whether it is occupied by them. The Track A and B construct established by the Congress clearly implies that the more precisely defined requirements of Section 271 can be met in an empty room, provided we are certain that the door has been unlocked."

The facilitator determined that the generality of the Public Interest requirement cannot seriously be argued to impose an explicit or implied minimum market penetration test, which was discussed at length in the report addressing Track A. The facilitator previously concluded that market penetration in the seven multistate workshop states is lower than in a number of states where 271 authority has been given, but is not out of line with the level of entry shown by evidence in some states.

Even though there may be no explicit or implied minimum market penetration test imposed by the Public Interest requirement, Qwest has provided evidence to show that the level of competition in North Dakota is proportionately higher than that in most of the other seven multistate workshop states. Using Qwest's September 2001 data, as a percentage of the 227,321 total access lines in Qwest's service territory, Qwest continues to serve 79.7 percent (181,209 lines), yielding a CLEC market penetration rate of 20.3 percent (46,112 lines).[155]

The facilitator added that issues as to the use of competitive levels as evidence of whether entry has been suppressed by a failure to make local markets open were fully addressed in prior workshops and no new or unique circumstances were demonstrated to exist here.

The NDPSC agrees with the facilitator's findings and conclusions.

5. Prior Qwest Conduct

AT&T cited what it saw as a pattern of past and continuing Qwest conduct that violated: (a) the pre-271 approval limits on in-region, interLATA service; and (b) Qwest's obligations to provide wholesale services to CLECs.

The facilitator and the Commission previously addressed the significance to be attached to Qwest's past provision of services deemed by the FCC to constitute in-region, interLATA service, under the unresolved *Separate Affiliate Requirement* issue of the Group 5 Report. The facilitator recommended, and the Commission agreed, that the nature of those violations should not be predictive of Qwest's conduct after 271 approval may be granted. Consequently, the facilitator recommended that the prior history of Qwest's performance in this regard does not demonstrate the kind of unique circumstances to find that Qwest's entry into the in-region, interLATA market would contravene the public interest.

AT&T also cited a number of circumstances that it claimed demonstrated that Qwest does not meet its section 251 and section 252 requirements in providing wholesale services to CLECs. None of those cited instances involved conduct in North Dakota. The facilitator determined the examples did not provide substantial evidence of a predictive, patterned refusal or inability of Qwest to comply with its wholesale service obligations in the past. The facilitator found these examples were insufficient to demonstrate a pattern of past abuse that is either: (a) insufficiently mitigated by a resolution of disputed issues in prior workshops, (b) so severe as to give reason to doubt the ability of an otherwise effective QPAP to mitigate, or (c) otherwise so pervasive and significant as to call into question the public interest of permitting Qwest to enter the in-region, interLATA market.

The NDPSC agrees with the facilitator's determination that these examples are insufficient to demonstrate a pattern of past abuse that is either: (a) insufficiently mitigated by a resolution of disputed issues in prior workshops, (b) so severe as to give

[155] See also Consultative Report of the North Dakota Public Service Commission, Consultative Report on Group 5 Issues, A. Track A Requirements, 3. Analysis of Evidence on Unresolved Issues, (i) Market Share of Competing Providers.

reason to doubt the ability of an otherwise effective QPAP to mitigate, or (c) otherwise so pervasive and significant as to call into question the public interest of permitting Qwest to enter the in-region, interLATA market.

On May 22, 2002, AT&T filed a Motion to Reopen Proceedings in the North Dakota Section 271 Compliance Investigation in order to allow admission of additional evidence relating to certain unfiled, secret interconnection service agreements between Qwest and some CLECs. AT&T alleges that these agreements were not filed, as they should have been under 47 U.S.C. § 252, which therefore made the terms and conditions set forth in those agreements available only to the party CLEC and not to other CLECs. AT&T alleges this conduct is a violation of the discriminatory provisions of 47 U.S.C. §251(b) and 47 U.S.C. §251(c).

At the NDPSC June 5, 2002 Informal Hearing, AT&T argued that secret agreements were negotiated between Qwest and some CLECs. AT&T stated that those agreements were required to be filed under 47 U.S.C. §§ 251 and 252. AT&T argued that, because Qwest failed to file those agreements, it is in violation of federal law and possibly state law. AT&T added that Qwest's violation of federal law should be considered by the NDPSC in its Section 271 proceeding because Qwest has thereby unlawfully discriminated against some CLECs in favor of others and has not given the same terms and conditions to all CLECs on a nondiscriminatory basis.

Qwest argued that federal law does not clearly define the type of agreements that should be filed under Section 252. Qwest stated that it has petitioned the FCC for a declaratory ruling to clarify the types of interconnections agreements that must be filed under Section 252. Qwest stated that a determination of the issue comes down to whether the agreements cited by AT&T constitute agreements that must be filed under Section 252. Qwest argued that such a determination should not be the subject of this Section 271 proceeding.

The NDPSC determined that such complaint would not be considered in the North Dakota Section 271 Compliance Investigation but that any further investigation or proceeding relating to the issues raised by AT&T in its Motion be heard in a separate docket under the provisions of 47 U.S.C. §251 and §252 and in accordance with future direction from the FCC.

6. Structural Separation

AT&T argued for structurally separating Qwest's wholesale and retail operations to end what it deemed a fundamental conflict of interest between Qwest's relationship with its retail customers and its relationship with its wholesale customers. Sprint joined in AT&T's structural separation argument.

Qwest argued there is no statutory authority allowing for structural separation, and that neither the FCC nor any state has required it.

The facilitator determined the issue is whether, in the absence of structural separation, Qwest's 271 approval would meet the public interest test. The facilitator concluded that structural separation would do nothing to change the motivations in question, nor would it mitigate the consequences of acting on those motives. Only a spin-off of an incumbent's wholesale and retail operations will do that. Changing the Qwest entities that interface with each other from work groups, departments or divisions, on the one hand, to separate corporate entities on the other hand, will occasion no change in the nature or extent of the diligence required to deter, detect, and sanction inappropriate interactions. Structural separation will only increase the transaction costs that will inevitably follow corporate separation. Structural separation having no connection with deterring, detecting or sanctioning failures to conform to rules about self-dealing, the facilitator categorically recommended that structural separation be rejected as a solution.

The NDPSC agrees with the conclusions and recommends that structural separation be rejected as a solution.

7. Sustained Checklist Compliance

Ascent commented that a public interest showing requires that Qwest be required to sustain compliance with the checklist over a period that is characterized by "a robust and thriving competitive local market."

The facilitator noted the FCC has not adopted a requirement that there be a minimum period of time across which Qwest should have to demonstrate checklist compliance. The facilitator recommended that it is both adequate and preferable to rely instead upon a sound PAP, as opposed to a history of compliance, as the means for assuring that markets will remain open.

The NDPSC agrees with the facilitator's conclusions.

8. Inducing Competition

Qwest cited a report of the New York Public Service Commission, which noted that CLEC market share increased by 130% in the year following the FCC granting 271 approval there. Qwest also cited the FCC conclusion expressed in the *Bell Atlantic-New York (Verizon) 271 Order*, that additional competition in interLATA telecommunications markets generally promotes the Public Interest.

The facilitator noted that the market size, demographics, and geography of New York differ from those of the states participating in these workshops. Nonetheless, the facilitator determined there is reason to believe that the opening of the in-region, interLATA market to Qwest will have the effect of inducing carriers in that market to accelerate their efforts to enter the local exchange market. The service bundling concept will require a response by CLECs. If Qwest's markets are open, the Commission would be correct to consider the potentially beneficial effect that Qwest's 271 approval will have on growing competition in the local exchange market.

The NDPSC agrees with the facilitator's conclusions.

9. Other Issues

The participants of the multi-state workshop raised a number of other issues that were addressed in other workshops. Those issues include the OSS test, DSL and advanced services, and change management. The results of the OSS Test are being conducted under the auspices of the ROC and will come before this Commission later. Advanced services were considered in the emerging services workshop and the report on that workshop addressed the issues in detail. Qwest's change management process will be the subject of further consideration by the Commission at a later hearing.

C. Conclusion

Qwest's requested authorization for entry into the in-region interLATA market should be deemed consistent with the Public Interest, Convenience and Necessity provided that Qwest incorporates the recommendations made by the facilitator and/or the NDPSC in this consultative report.

XI. CONSULTATIVE REPORT ON DATA RECONCILIATION

A. Background

On February 14, 2002, the NDPSC issued a Notice of Hearing and a formal hearing was held as scheduled on March 18-19, 2002, in the NDPSC hearing room, State Capitol, 12th Floor, Bismarck, North Dakota. The NDPSC stated that it would consider Qwest's commercial performance and the data reconciliation review conducted by Liberty Consulting Group.

Qwest appeared at the hearing and presented evidence in support of its position. AT&T also appeared and offered testimony. On April 16, 2002, Qwest and AT&T filed proposed consultative reports.

To respond to arguments about the accuracy of Qwest's performance data, Qwest agreed to participate in data reconciliation as an adjunct to the audit. In August 2001, the ROC asked Liberty Consulting Group ("LCG") to conduct data reconciliation as an extension of the performance measures audit. The data reconciliation process was designed to determine whether any of the information provided by CLECs demonstrated inaccuracy in Qwest's reported performance results as these measures were defined in the PID. Any CLEC involved in any aspect of Section 271 proceedings anywhere in Qwest's region had an opportunity to identify PIDs that they thought were generating inaccurate information. Three CLECs – AT&T, WorldCom and Covad – sought reconciliation of PIDs around four different products: interconnection trunks, analog loops, 2-wire non-loaded loops and line sharing.

B. Analysis of Evidence

The reconciliation process began in September 2001. LCG issued six Data Reconciliation Reports, each based on a detailed order-by-order review of various records. In total, LCG analyzed about 10,000 orders on trouble tickets.

LCG issued its first five data reconciliation reports using data from Arizona, Colorado, Nebraska and Washington. Since the hearing, LCG issued its report for Oregon. Although reconciliation work is ongoing in Utah and Minnesota, Mr. Stright from LCG testified that in his opinion the data reconciliation work completed by LCG to date is representative of what LCG will find in these remaining states. However, Mr. Stright also admitted that it might, in the evaluation of the data for the remaining states, identify other problems with the accuracy and reliability of Qwest's performance data. AT&T commented that, in fact, LCG's Oregon report identified two new problems not previously reported upon. Also, Mr. Stright testified that it is premature to draw an overall conclusion regarding the reliability of Qwest's reported performance data.

As a result of the review of the Arizona, Colorado, Nebraska, Washington, and Oregon data, LCG issued one Exception and 13 Observations to Qwest's performance data, of which the Exception and 11 Observations have since been closed. Six of the Exceptions and Observations were system-related problems that Qwest has since remedied. The other six issues were problems related to human error, two of which were still open. Before LCG closed an Observation or Exception, LCG required evidence to establish that Qwest had improved its procedures and processes to minimize or, when possible, eliminate the likelihood of recurrence of the error. However, AT&T reminds the NDPSC that LCG testified it was not able to verify the fixes for many of the problems it has identified.

Qwest stated that the two Observations that remained at the hearing concern incidents of human error, which does not degrade Qwest's performance results. Observation 1036, which closed in the Oregon Report, concerned human error on the issue of interconnection trunk reterminations. The second outstanding issue, Observation 1031, related to service order miss codes in which Qwest improperly determined that a due date was missed for customer reasons. In reality, the problem orders were missed for Qwest reasons.

AT&T argued that the reliability of Qwest's performance data remains an open issue that will not be settled until the completion of both the LCG data reconciliation effort and KPMG's independent calculation of performance results for the pseudo-CLEC. As part of the ROC-OSS test KPMG will be validating Qwest's data in the OSS test by comparing KPMG's independently calculated PID results for the pseudo-CLEC to the Qwest PID results for the pseudo-CLEC. AT&T argues that the NDPSC should not make a final determination as to the accuracy and reliability of Qwest's performance results until Liberty completes its data reconciliation effort and KPMG has completed its data verification.

As noted previously, on May 28, 2002 KPMG issued its Final Report on the ROC OSS test. On June 3, 2002, Qwest filed a Supplemental Consultative report reflecting its commercial performance through April 2002, which included copies of the LCG's remaining data reconciliation reports for Oregon, Utah and Minnesota.

C. Conclusion

After reviewing the evidence submitted by LCG, and arguments of both Qwest and AT&T, the NDPSC concludes that Qwest's audited and reconciled performance results demonstrate that the NDPSC can rely on Qwest's performance data to evaluate whether Qwest satisfies Section 271 of the Act.

The KPMG evaluation will be considered under the *ROC OSS Test* section of this report.

XII. CONSULTATIVE REPORT ON COMMERCIAL PERFORMANCE

A. Background

On February 14, 2002, the NDPSC issued a Notice of Hearing and a formal hearing was held as scheduled on March 18-19, 2002, in the NDPSC hearing room, State Capitol, 12th Floor, Bismarck, North Dakota. The NDPSC stated that it would consider Qwest's commercial performance and the data reconciliation review conducted by Liberty Consulting Group.

Qwest appeared at the hearing and presented evidence in support of its position. AT&T also appeared and offered testimony. On April 16, 2002, Qwest and AT&T filed proposed consultative reports. On June 3, 2002, Qwest filed a Supplemental Consultative report reflecting its commercial performance through April 2002.

On July 20, 2001, the FCC issued its Order approving the Section 271 application by Verizon for Connecticut. In Appendix D to that Order, the FCC summarized the standards it applies in Section 271 proceedings. The FCC noted that when, as here, parity and benchmark standards are developed through open proceedings with input from the incumbent and competing carriers, those standards represent informed and reliable attempts to objectively measure compliance with the Act.

> Thus, to the extent there is no statistically significant difference between a BOC's provision of service to competing carriers and its own retail customers, the Commission generally need not look any further. Likewise, if a BOC's provision of service to competing carriers satisfies the performance benchmark, the analysis is usually done.

Connecticut Order at Appendix D-5, ¶ 8. Even when statistically significant differences in performance exist, the Commission may "conclude that such differences have little or no competitive significance in the marketplace. In such cases, the Commission may conclude that the differences are not meaningful in terms of statutory compliance." *Id.* Moreover, when "there are multiple performance measures associated with a particular checklist item, the Commission considers the performance demonstrated by all the measurements as a whole. Accordingly, a disparity in performance for one measure, by itself, may not provide a basis for finding noncompliance with the checklist." *Id.* ¶ 9.

B. Analysis of Evidence

AT&T stated that Qwest's commercial performance with respect to unbundled loops (checklist item 4) and resale (checklist item 14) represents the most likely to affect

CLECs and end user customers in North Dakota. Competitors in North Dakota use these products in the greatest volumes. In addition, other functions that CLECs need to adequately provide service to, and inform, its customers include Qwest's OSS, ordering status information, and accurate billing information (all checklist item 2 functions).

As of the NDPSC hearing on March 18, 2002, AT&T agreed that, conditioned upon the conclusion of the OSS test, including the KPMG data reconciliation as well as conclusion of the Liberty Consulting reconciliation process, that Qwest is satisfying its performance obligations with respect to checklist items 3, 6, 7, 8, 9, 10, 11, 12, and 13. AT&T believes that, for checklist items 1 (interconnection and collocation) and checklist item 5 (transport), the activity in North Dakota is not significant enough and that the record must be updated with regional data or test data in order to draw conclusions about performance. AT&T does not believe Qwest has satisfied its performance obligations with respect to checklist items 2, 4, 14.

1. Checklist Item Number 1 – Interconnection and Collocation.

a. Interconnection

Checklist Item 1 requires Qwest to provide CLECs with interconnection in substantially the same time and manner as it provides similar services to its retail customers. Interconnection concerns the mutual exchange of traffic between Qwest and CLECs. Interconnection is measured by trunk blockage, interconnection trunk installation and interconnection trunk repair.

Qwest's trunk blockage on CLEC interconnection trunks to Qwest tandem offices for the months of January 2002 through April 2002 was non-existent, well below the ROC's 1% benchmark. Ex. 1[156] at 20, NI-1A. Similarly, trunk blockage on CLEC interconnections trunks to Qwest end offices was also non-existent, *Id.*, NI-1B.

Qwest's trunk installation performance also met the ROC standards. Qwest met 100% of its installation commitments to CLECs in each of the last four months, with an average interval between 8 and 18 days. *Id.* at 21, OP-3 & OP-4. The intervals were at parity with retail performance in each month. *Id.* Trunk installation quality was excellent as well, as 100% of the newly installed trunks did not experience any trouble within 30 days. *Id.*, OP-5 & OP-5*.

The rate of trouble reports for interconnection trunks has been low—0.03% (3 in 10,000 trunks) during each of the last three months. *Id.* at 25, MR-8. Qwest cleared 100% of CLEC trouble reports within four hours during each of the last three months. *Id.*

[156] Ex. 1 to Qwest Corporation's January 2002-April 2002 Performance Data for North Dakota as Reported under the ROC created Performance Metrics.

at 24, MR-5. The mean time to restore service for CLECs was less than two hours. *Id.*, MR-6.

AT&T argued that the Commission should not give Qwest credit for provisioning and repairing various services such as interconnection trunks that have low volumes in North Dakota. The NDPSC, however, finds that the strongest indicator of Qwest's performance and ability to provide wholesale services in North Dakota is its provision and repair of such services in response to actual CLEC demand. In many instances, this level of demand is likely representative of a reasonably foreseeable expectation of future CLEC demand for such services considering the number of access lines in exchanges where Qwest provides services. To the extent low volumes are reflective of little activity by CLECs regarding a particular service, the Commission will consider, as recommended by both Qwest and AT&T, Qwest's regional performance as indicative of its ability to provide the service in North Dakota if requested.

The Commission finds Qwest meets the performance requirements of the Act with regard to interconnection.

b. Collocation

Collocation allows CLECs to place equipment in a Qwest premises (primarily central offices) for the purpose of interconnection or accessing UNEs. Recently, in response to two collocation decisions from the FCC, the ROC significantly revised the collocation PIDs. The revised PIDS set installation intervals of 90 days when the collocation is forecasted, and 120-150 days when no forecast is provided (depending on whether major infrastructure modifications are necessary). The PIDs also set a 10-day benchmark for feasibility studies.

Although Qwest had little performance data to report in North Dakota for January 2002 through April 2002, Qwest's regional results demonstrate that from January 2002 through April 2002, Qwest met the 90- 120- and 150-day installation benchmarks, with average intervals shorter than the ROC-set benchmark. Ex. *2 at 33,*[157] CP-1A to 1C. Qwest completed 100% of its installation commitments for collocations on time. Ex. 2 at 33-34, CP-2A to 2C.

Feasibility is the second measurable component of collocation. In the first 10 days of the installation interval, feasibility studies are completed and Qwest is required to inform CLECs whether the requisite central office contains adequate space and power to meet the CLEC's request. Qwest's regional data demonstrates that in the months of January 2002 through April 2002, Qwest met the collocation feasibility obligations 100% of the time. Ex. 2 at 34, CP-4. Qwest's performance exceeds the

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[157] Ex. 2 to Qwest's January 2002-April 2002 Performance Data for North Dakota as Reported under the ROC created Performance Metrics.

OP-3. These facilities were installed at parity with retail performance in average intervals that were also at parity with retail every month. *Id.*, OP-4. More than 87.5% of such circuits were delivered without trouble in each month. *Id.* at 196, OP-5 & OP-5*.

d. DS-3 UDIT Repairs

The CLEC trouble rate for DS-3 UDIT was 2% or smaller in each of the last four months. *Id.* at 200, MR-8. During that time, Qwest usually cleared at least 78% of troubles in Zone 1 and 100% of troubles in Zone 2 within four hours. *Id.* at 198-199, MR-5. The mean time to restore was two hours or less and was always at parity with retail. Id., MR-6.

The Commission concludes that Qwest meets the requirements of checklist item 5 for unbundled transport.

6. Checklist Item 6 – Unbundled Switching.

The ROC did not adopt any performance measures for stand-alone unbundled switching because there is no demand for it. Instead, the ROC captured unbundled switching as part of the UNE-P combinations. As stated above, the Commission finds that Qwest meets its performance obligations as to UNE-P. Qwest's UNE-P performance establishes that Qwest can provide unbundled switching to CLECs upon request.

7. Checklist Item 7 – 911/E911, Directory Assistance & Operator Services.

a. 911/E911 Services

Qwest measures 911 services in two ways. First, it measures the amount of "Time to Update Databases." This measurement is "parity-by-design" because Qwest's E911 database does not distinguish between updates for Qwest or CLECs. In each of the last four months, Qwest's E911 database was updated in less than two hours. Ex. 1 at 154, DB-1A. Second, Qwest installs trunks to carry 911 traffic. Throughout the region, Qwest had little data to report for 911/E911 trunk installations over the last four months. Nonetheless, Qwest generally provided 100% of these circuits on time. Ex. 2 at 206, OP-3. Installation quality on E911 circuits was excellent. In each of the last four months, Qwest installed 100% of 911 circuits without the CLECs issuing a trouble report. *Id.* at 207, OP5.

The trouble rate on CLEC trunks in North Dakota over the last four months was 0.0%. Ex. 1 at 159, MR-8. Regionally when repairs were needed, Qwest cleared 100% of the reported troubles in 4 hours in both Zones 1 and 2. Ex. 2 at 210-211, MR-5.

Service was always restored at parity and in an average of less than 4 hours in both Zone 1 and Zone 2. *Id.*, MR-6.

b. Directory Assistance and Operator Services

The only PIDs for operator services and directory assistance measure the speed of answering. These are "parity by design" measures because the persons answering calls do not know whether the caller is a Qwest or CLEC customer. For the last four months, the speed of answer for directory assistance and operator service calls consistently averaged eight and 10 seconds. Ex. 1 at 160, DA-1, OS-1.

Qwest is providing 911, E911, operator services, and directory assistance to competitors on a nondiscriminatory basis. The Commission finds that Qwest meets the requirements of checklist item 7.

8. Checklist Item 8 – White Pages Directory Listings.

The only PIDs for white pages directory listings are "parity by design" because Qwest processes CLEC end user listings with the same or similar systems, databases, methods, procedures and personnel used by Qwest for its own retail end user listings. In each of the last four months, Qwest completed electronically processed updates to the directory listings database in an average of 0.11 seconds or less, with an accuracy rate of over 90%. *Id.* at 161, DB-1 C-1, DB-2 C-1.

Qwest is providing white pages listings for CLEC customers with the same accuracy and reliability that it provides for its own customers. The Commission concludes that Qwest satisfies checklist item 8.

9. Checklist Item 9 – Number Administration.

The ROC PIDs track how well Qwest loads CLECs NXX prefixes into its switches. In each of the last four months, Qwest loaded and tested 100% of CLEC NXX codes prior to the LERG effective date. Ex. 2 at 215, NP-1A. The percentage of NXX code activations delayed for facility reasons was 0.0% each month. *Id.*, NP-1B.

Qwest provides performance to CLECs at or above ROC standards on the ROC PID that concerns NXX code activation. The Commission concludes that Qwest complies with checklist item 9.

10. Checklist Item 10 – Call-Related Databases and Associated Signaling.

Qwest offers CLECs access to, and routing over, its call-related databases and associated signaling in the same manner that Qwest accesses those services. Qwest uses a queuing and routing system that treats all carriers alike. The sole ROC performance measure concerning this checklist item is DB-1B, which evaluates the time to update the line identification database ("LIDB"). This is a parity-by-design measure. The aggregate Qwest and CLEC result under that measurement has consistently been less than 8.0 seconds. Ex. 1 at 163, DB-1B.

Qwest provides performance to CLECs at or above ROC standards on this ROC PID. The Commission finds that that Qwest satisfies checklist item 10.

11. Number Portability.

Number portability requires Qwest to set a "trigger" before the scheduled sort time or frame due time. In each of the last four months, Qwest set 99% of LNP triggers prior to the scheduled start time for coordinated loop cutovers, exceeding the ROC's 95% benchmark. During the same period, Qwest set over 99% of LSA triggers prior to the scheduled start time for LNP orders not requiring loop coordination, again beating the 95% benchmark. *Id.* at 164, OP-8B & OP-8C.

Beginning in October, Qwest also began reporting the percentage of ported numbers that are disconnected before the CLEC completes its side of the number porting. The ROC requires that Qwest provide at least 98.25% of all ported numbers without an associated disconnect. Over the last four months 100% of all numbers were ported without an associated disconnect. *Id.*, OP-17.

Qwest is providing performance to CLECs at or above ROC standards on both of the ROC PIDs that concern number portability. The Commission finds that Qwest is in compliance with checklist item 11.

12. Checklist Item 12 – Local Dialing Parity.

The ROC has not adopted any performance measures for this checklist item. The Commission reaffirms that Qwest is in compliance with checklist item 12.

13. Checklist Item 13 – Reciprocal Compensation.

The ROC PIDs measure the accuracy and completeness of reciprocal compensation bills. Qwest's bills for reciprocal compensation have been both accurate and complete. Since February, Qwest's bills have been accurate and complete 100% of the time. Ex. 1 at 166, BI-3B & BI-4B.

Qwest provides performance to CLECs at or above ROC standards on both of the ROC PIDs that concern reciprocal compensation. The Commission finds that

Qwest complies with checklist item 13 by accurately tracking and billing reciprocal compensation with CLECs.

14. Checklist Item 14 – Resale.

The PIDs for resale measure performance for 12 products: residential lines, business lines, Centrex, Centrex 21, PBX, Basic ISDN, Qwest DSL, Primary ISDN, DS0, DS1, DS3 and higher, and Frame Relay. Due to the small volumes for some of these services, the focus of our review is on residential POTS, business POTS and Centrex 21 services. AT&T noted that no charts for designed products for resale were produced by Qwest because there is little activity in North Dakota. AT&T recommended that the NDPSC request more information regarding resold design services before issuing a final decision on checklist item 14.

a. Provisioning Resold Residential, Business and Centrex 21 Services Without Dispatch

Qwest provides a vast percentage of all resold orders without requiring a technician dispatch. AT&T noted that, as of the NDPSC March 18, 2002 hearing, Qwest had failed to provide adequate performance in two of four months of reported data (November and December 2001) for residential resale orders not requiring a technician dispatch. However, for the four months of January 2002 through April 2002, Qwest has met over 97.6% of its CLEC installation commitments residential POTS without a dispatch each month in an average of 2.9 days or less (Ex. 1 at 169, OP-3 & OP-4)

For the four months of January 2002 through April 2002 Qwest also performed as follows: for business POTS without a dispatch Qwest met 100% of its CLEC installation commitments each month in an average of 2.8 days or less (*Id.* at 180, OP-3 & OP-4); and for Centrex 21 without a dispatch, Qwest met 100% of its CLEC installation commitments each month in an average of 5 days or less. *Id.* at 201-202, OP-3 & OP-4. Qwest's performance was at parity with retail performance.

b. Provisioning Resold Residential, Business and Centrex 21 Services That Require Dispatch

For dispatches within MSAs for residential POTS, Qwest met 91% or more of its CLEC installation commitments each month in an average of 3.9 days or less (*Id.* at 167, OP-3 & OP-4); for business POTS Qwest met all but one of its CLEC installation commitments during the four months in an average of 4.75 days or less (*Id.* at 178, OP-3 & OP-4); and for Centrex 21 Qwest met all but one of its CLEC installation commitments in an average of 11.0 days or less (*Id.* at 200, OP-3 & OP-4). Qwest's performance was consistently at parity with retail performance. As to dispatches outside of MSAs, Qwest missed only one of its commitments over the last four months.

Id. at 168, 179, & 201, OP-3 & OP-4. In each month from January 2002 through April 2002, with one exception, these installation commitments met were statistically equal to equivalent retail service as were the average installation intervals.

c. Repairing Resold Residential, Business and Centrex 21 Services

In each of the last four months, the overall trouble rate for resold CLEC lines has been small: 1.0% for residential POTS (*Id.* at 176, MR-8); 1.4% or less for business POTS (*Id.* at 187, MR-8); and less than 0.4% for Centrex 21 (*Id.* at 209, MR-8). These results were usually at parity with retail service.

There are nine primary repair measurements per type of resold service. For resold residential POTS service in each of the last four months, with the exception of March 2002 (50%), Qwest cleared at least 75% of all out-of-service situations in 24-hours and all nine metrics were usually at parity with retail service. Id. at 172-175, MR-3, MR-4 & MR-6. For resold business POTS service in each of the last four months, Qwest cleared 100% of all out of service situations in 24-hours and all nine metrics were consistently at parity with retail service. *Id.* at 183-186, MR-3, MR-4 & MR-6. Finally, for resold Centrex 21 service, Qwest cleared the only out of service situation in 24 hours and all the metrics were at parity with retail service. Ex. 2 at 205-208, MR-3, MR-4 & MR-6. Qwest met or exceeded performance expectations for all 27 key repair metrics around the three key resold products.

Qwest's performance results for January 2002 through April 2002 show that Qwest continues to provision, maintain and repair resold services in substantially the same time and manner (i.e., at parity) with the provision, maintenance and repair of services Qwest provides to retail customers. Given the positive performance results, the Commission finds Qwest satisfies checklist item 14.

C. Conclusion

The Commission recommends approval of Qwest's 271 application based on Qwest's most recent commercial performance.

PUBLIC SERVICE COMMISSION

Anthony T. Clark Commissioner	Susan E. Wefald President	Leo M. Reinbold Commissioner

ROC's 90% benchmark. Moreover, Qwest provided these feasibility studies in less than 9.5 days each month, besting the ROC's 10-day benchmark. *Id.*, CP-3.

Given that Qwest is consistently meeting or exceeding the standards contained in the ROC PIDs, the Commission finds that Qwest satisfies the collocation requirements of Checklist Item 1.

2. Checklist Item 2 – OSS and UNE Combinations.

a. OSS

The FCC has defined checklist item 2 principally as access to UNE Combinations and access to OSS. Access to OSS was tested by the ROC. The ROC OSS test was designed to evaluate all of Qwest's OSS, going beyond the minimum levels necessary to meet the Act's requirements. The test's military-style "test until you pass" approach ensures that all significant exceptions were tested, modified, and re-tested until the relevant success criteria were met. Hewlett-Packard, the pseudo-CLEC, tested Qwest's OSS, with KPMG Consulting serving as Test Administrator. The ROC OSS test is discussed in the *ROC OSS Test* section of this report.

Qwest's OSS is a combination of the systems, databases, personnel and documentation that are integral to pre-ordering, ordering, provisioning, maintenance and repair, and billing of facilities and services to CLECs. Qwest's principal evidence on this subject comes from the ROC OSS Test. However, Qwest presented its commercial performance data for the state of North Dakota and regionally as evidence of how it has been performing in the actual marketplace over the last four months concerning the ROC-determined benchmarks for gateway availability, pre-order response times, reject notifications, firm order confirmations, jeopardy notifications, and center access.

b. UNE Combinations

UNE Combinations allow CLECs to offer finished services to end-user customers over combinations of unbundled network elements (UNEs). Qwest tracks three forms of UNE Combinations in its performance data: UNE-P (both UNE-P-POTS and UNE-P-Centrex) as well as Enhanced Extended Loops (EELs).

AT&T suggests that there is insufficient UNE-P activity in North Dakota to draw definitive conclusions about Qwest's performance, but states that the performance reported with respect to that limited amount of UNE-P activity is unsatisfactory. AT&T noted that, as of the NDPSC hearing on March 18, 2002, Qwest had missed its OP-5 (new service installed without problems) requirements for UNE-P Centrex for 12 consecutive months; that Qwest had missed its MR-3 maintenance requirements for two of the recent three months of reported data; and that Qwest's trouble rate MR-8 for all UNE products was unsatisfactory in the most recent twelve months.

(i) Installation of UNE-P-POTS Without Dispatch

Whether Qwest is meeting its obligations is centered on how it provides and maintains UNE-P-POTS without the dispatch of a technician, since Qwest installs the vast majority of all UNE-P-POTS lines without a dispatch. For UNE-P orders in that category, Qwest provisioned 100% of its installation commitments in each of the last four months in an average interval of 3.5 days or less. Ex. 1 at 74, OP-3 & OP-4. These results were usually at parity with equivalent retail performance.

(ii) Installation of UNE-P-POTS With Dispatch

When the provision of UNE-P-POTS within MSAs requires the dispatch of a technician, during the months of January 2002 through April 2002 Qwest met 100% of its CLEC installation commitments in 8.7 days or less. Ex. 1 at 72, OP-3 & OP-4. For dispatches outside MSAs, Qwest met 100% of its installation commitments to CLECs in each of the last four months in 3.0 days or less. *Id.* at 73, OP-3 & OP-4. Irrespective of the type of technician dispatch, the results were at parity with retail performance. Additionally, Qwest completed over 83% of new UNE-P-POTS installations without the CLEC experiencing any trouble. *Id.* at 75, OP-5. This measure was at parity with retail service.

(iii) Repair of UNE-P-Pots Lines

The overall trouble report rate for all UNE-P installations in North Dakota was very low— less than 1.2% for January 2002 through April 2002. *Id.* at 81, MR-8. When there was a trouble report, Qwest cleared 10 of 11 CLEC out of service reports during the last four months within 24-hours and 38 of 39 CLEC trouble reports within 48 hours when no technician dispatch was required to clear trouble. *Id.*, at 80, MR-3, MR-4. The mean time to restore UNE-P service was 10 hours or less. *Id.*, MR-6. For the months of January 2002 through April 2002, these measures were usually at parity with retail.

In the repair of UNE-P-POTS lines requiring a technician dispatch, Qwest cleared 100% of out-of-service troubles on time. *Id.* at 77-78, MR-3. The mean time to restore service to CLECs was 17.25 hours or less and the measures were at parity with retail service. *Id.* at 77-79, MR-3, MR-6.

(iv) Installation of UNE-P-Centrex Without Dispatch

Qwest installs the majority of its UNE-P Centrex lines without technician dispatch. For UNE-P-Centrex orders without a technician dispatch, Qwest met 100% of its installation commitments in each of the last four months and in an average interval of under 5 days. *Id.* at 85, *OP-3 & OP-4.* For installations within and outside MSAs with dispatch of a technician, Qwest met 100% of its CLEC commitments in three of four months in an average of less than 5 days. Ex. 1 at 83-84, OP-3 & OP-4. With the exception of the one-month, the metrics were at parity with retail service. *Id.* at 83-85.

As noted previously, as of the NDPSC hearing on March 18, 2002, Qwest had missed its OP-5 (new service installed without problems) requirements for UNE-P Centrex for 12 consecutive months. Qwest investigated this issue because Qwest repair tickets for three months of orders with inward lines. In "Qwest Corporation's January 2002-April 2002 Performance Data for North Dakota" filed May 29, 2002, Qwest reports it believes the anomaly is caused by coding problems which it is working to correct. When the problems are resolved, Qwest anticipates results consistent with the region-wide results of 83% of such lines installed without trouble. Ex. 2 at 94, OP-5 & OP-5*.

(v) Repair of UNE-P-Centrex Lines

The overall trouble rate for CLEC UNE-P-Centrex lines was less than 0.8% each month January 2002 through April 2002. *Id.* at 92, MR-8 & MR-8*. Although the trouble rate for retail service was even lower, the Commission finds the trouble rate of less than 1% meets Qwest's obligations. When troubles occur, Qwest resolved them at parity with equivalent retail service. Irrespective of whether a technician dispatch was required to clear the trouble, Qwest cleared over 91% of CLEC out-of-service reports within 24 hours and over 85% of all CLEC trouble reports within 48 hours. *Id.* at 88-91, MR-3, MR-4. The mean time to restore UNE-P-Centrex service was always less than 16 hours, always at parity with retail. *Id.*, *MW-2* MR-6.

(vi) Provisioning EELs

CLECs in North Dakota have not ordered Enhanced Extended Links (EELs) from Qwest. The only performance measurement for EELs set to date by the ROC concerns the percentage of commitments met (OP-3). The ROC determined that Qwest should meet 90% of its OP-3 EEL obligations. From January 2002 through April 2002, in Zone 1 (where 95% of the EEL activity exists) Qwest improved its EEL installation performance to 77.42% in January 2002 to 90% in April. Ex. 2 at 102, OP-3. The Commission finds Qwest's performance acceptable given that this service is still relatively new and infrequently ordered.

c. Jeopardy Notification

AT&T notes that Qwest's jeopardy notification measures (Ex. 1 at 59, PO-8 and PO-9) show very low volume in North Dakota. Looking at regional results (Ex. 2 at 67-70), AT&T notes that, as the NDPSC March 18, 2002 hearing, Qwest fails PO-8B (interval for sending notice) for loops in four of four months and PO-8D for UNE-P in four of the last four months. AT&T states that, given the importance of CLECs being able to notify their customers if any order date will be missed, this is competitively significant.

d. Flow-Through Rates

Electronic flow-through of an order occurs when an order is submitted by a customer service representative and accepted into the ILEC's service order processor without the need for any manual intervention on the part of the ILEC. AT&T states that manual intervention or human intervention can result in order information errors, improperly rejected orders, or severely restricting the number of CLEC orders processed in a day.

As of the NDPSC March 18, 2002 hearing, Qwest failed to meet the benchmark (PO-2B-1) for resale orders submitted through the IMA-GUI interface in four of the last four months. Qwest also failed to meet the PO-2B-1 benchmark of 90% in January and February 2002. However, the March 2002 performance result was 96% and the April 2002 performance result was 94%. Ex. 1 at 45.

As of the NDPSC March 18, 2002 hearing, Qwest failed to meet benchmark PU-2B-2 in three of the last four months. However, from January 2002 through April 2002, the performance result has been 100% with the exception of 57% in February 2002. Ex. 1 at 45.

For LNP orders submitted through the IMA-GUI interface, Qwest failed to meet benchmark (PO-2B-1) in three of the last four months. However, in April 2002, the performance result was 100%. Ex. 1 at 47.

e. Billing Systems

(i) Billing Completion Notification

The FCC has found that, "a BOC must demonstrate that it provides competing carriers with wholesale bills in a manner that gives competing carriers a meaningful opportunity to compete."[158] The FCC has also found "that the BOC must demonstrate that it can produce a readable, auditable and accurate wholesale bill in order to satisfy its nondiscrimination requirements under checklist item 2."[159] The FCC has recognized that, "[i]naccurate or untimely wholesale bills can impede a competitive LEC's ability to compete in many ways."[160]

The FCC described billing completion notices as:

[158] *Application of Verizon Pennsylvania Inc., Verizon Long Distance, Verizon Enterprise Solutions, Verizon Global Networks Inc., and Verizon Select Services Inc. for Authorization To Provide In-Region, InterLATA Services in Pennsylvania*, CC Docket No. 01-138, FCC 01-269 (September 19, 2001) at ¶ 15 [hereinafter "**Verizon Pennsylvania 271 Order**"].
[159] *Id*, ¶ 22.
[160] *Id*, ¶ 23.

> [Billing Completion Notifiers (BCNs)]BCNs inform competitors that all provisioning and billing activities necessary to migrate an end user from one carrier to another are complete and thus the competitor can begin to bill the customer for service. Premature, delayed or missing BCNs can cause competitors to double-bill, fail to bill or lose their customers.[161]

KPMG Consulting described the impact of Qwest's failure to remit accurate wholesale bills as follows:

> Issuing bills with incorrect charges will have the following effect on CLECs:
>
> ***Altering expected operating costs.***
>
> By incorrectly charging for a given service, Qwest alters a CLEC's expected operating costs and could affect CLEC budgetary planning and related activities.
>
> ***Increased resource usage.***
>
> Incorrect application of rates and charges on a CLEC's bills will force a CLEC to regularly reconcile these bills – identifying and correcting the incorrect rates and charges. The necessity of an extensive validation of each bill will increase CLEC resource utilization, thereby increasing operating costs.[162]

The PO-7 Billing Completion Notification Timeliness standard is the percent of billing completion notices delivered within five business days.[163] The standard for the PO-7 measurement is parity with Qwest's retail performance.

Qwest's PO-7 performance results show that, from June 2001 through January 2002, Qwest's failed to provide billing completion notices to CLECs in North Dakota that use the IMA-GUI interface as quickly as it does for retail customers. Ex. 1 at 58. In December 2001, Qwest also failed to provide billing completion notices to CLECs in North Dakota that use the IMA-EDI interface as quickly as it does for retail customers. Ex. 1 at 58. Qwest's recent performance in delivering timely billing completion notices has been as low as 56.83% for North Dakota CLECs that use the IMA-GUI interface, however, performance for January 2002 through April 2002 has been at least 95%. In December 2001, Qwest's performance in delivering timely billing completion notices was 53.09% for North Dakota CLECs that use the IMA-EDI interface, however, performance from June 2001 through November 2001 was at least 95%. Ex. 1 at 58.

AT&T finds that Qwest has serious problems with the completeness, accuracy and timeliness of its billing records in North Dakota, especially when, in contrast to the

[161] *Id*, ¶ 43.

[162] Observation 3076, Initial Date: December 27, 2001.

[163] Qwest Service Performance Indicator Definitions (PID), ROC 271 Working PID Version 4.0, October 22, 2001, p. 19.

ROC performance indicator definition which measures the percent of notices delivered within five business days, the FCC found performance that delivers 95% of the billing completion notices by noon of the day following order completion in its billing systems as "a reasonable and appropriate measure of whether Bell Atlantic provides timely notification that a service order has been recorded as complete in Bell Atlantic's billing systems."[164]

(ii) Billing Timeliness

In the months of May 2001 through April 2002 Qwest provided CLECs with timely access to usage records and delivered over 97% of all bills within the requisite 10-day period. Ex. 1 at 68-69, BI-1A, BI-1B, and BI-2.

(iii) Bill Accuracy

In the months of May 2001 through November 2001, Qwest's performance shows that the bills it sends to CLECs were not as accurate as the bills it sends to similarly situated retail customers. Since January, however, Qwest provided over 99% billing accuracy, which was at parity with retail results. Ex. 1 at 70, BI-3A.

f. Conclusion

Given that Qwest is substantially meeting or exceeding the standards contained in the ROC PIDs, the Commission finds that Qwest satisfies the requirements of checklist item 2.

3. Checklist Item 3 – Access to Poles, Ducts, Conduits and Rights of Way.

The ROC has not adopted any performance measures for this checklist item. The Commission previously recommended that Qwest is in compliance with checklist item 3.

4. Checklist Item 4 – Unbundled Loops.

a. Analog Voice Loops

(i) Installation of Unbundled Analog Loops

AT&T noted that, as of the NDPSC March 18, 2002 hearing, Qwest had failed to meet the ROC's 90% installation commitments met benchmark standard in two of the

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[164] *Application by Bell Atlantic New York for Authorization Under Section 271 of the Communications Act to Provide In-Region, InterLATA Service in the State of New York*, CC Docket No. 99-295, Memorandum Opinion and Order, FCC 99-404, released December 22, 1999, ("**BANY Order**"), ¶ 189.

last four months of reported data, specifically November and December 2001. However, from January 2002 through April 2002, Qwest met over 98% of its commitments in each month. Ex. 1 at 96, OP-3.

AT&T noted that, as of the NDPSC March 18, 2002 hearing, Qwest had failed to meet the ROC's six-day average installation interval benchmark standard in two of the last four months of reported data, specifically November and December 2001. However, from January 2002 through April 2002, Qwest met the average installation interval for CLEC loops below the ROC's 6-day benchmark. *Id.*, OP-4.

AT&T noted that, as of the NDPSC March 18, 2002 hearing, when Qwest does miss an installation commitment for unbundled analog loops, Qwest does not eventually install that loop as quickly for CLECs as for similarly situated retail customers (OP-6A). Again, this observation was found for November and December 2001 reported data and for January 2002 through April 2002, Qwest has provided nondiscriminatory treatment for CLECs for under this measure.

AT&T also noted that, for the same months of November and December 2001, Qwest's number of delayed days for non-facility reasons was significantly greater that delay days for facility reasons and loop conditioning in rural areas. The reported performance data for January 2002 through April 2002 indicates Qwest has corrected its performance in this area.

In addition, Qwest installed 97% of new loops without a CLEC filing a trouble report in the months of January 2002 through April 2002. Those results exceeded Qwest's retail performance. *Id.* at 97, OP-5.

(ii) Repair of Unbundled Analog Loops

The overall trouble rate for Qwest Analog loops was less than 1.0% in January 2002 through April 2002. In each month the trouble rate for CLEC loops was at parity with the trouble rate for Qwest's retail analog loops. *Id.* at 100, MR-8. When repairs were needed, Qwest cleared over 96% of out-of-service troubles within 24 hours. *Id.* at 99, MR-3. Qwest also cleared 100% of all CLEC trouble reports within 48 hours. *Id.*, MR-4. This performance was at parity with Qwest's retail service. Similarly, the mean time to restore service to CLECs was always below ten hours and at parity with retail service. *Id.*, MR-6.

b. Coordinated Cutovers Completed on Time

Since Qwest opened a center in Omaha in March 2001 to manage coordinated cuts across Qwest's 14-state region, Qwest's performance has exceeded the ROC 95% benchmark. Qwest timely provisioned analog loops 100% of the time for the months January 2002 through April 2002. Ex. 1 at 130, OP-13A. For all other loops, Qwest also installed 100% of such loops on time. *Id.*

c. *Non-Loaded (2-Wire) Loops*

(i) Installation of 2-wire non-loaded unbundled loops

In each of the last four months, Qwest installed over 96% of such loops on time surpassing the ROC's 90% benchmark. *Id.* at 101, OP-3. Qwest provisioned these loops in short intervals, averaging less than the six-day benchmark in each month. *Id.*, OP-4

(ii) Repair of 2 wire non-loaded unbundled loops

Over the last four months, the trouble rate for such CLEC loops was always 0.3% or less, and always at parity with that experienced by Qwest's retail customers. Ex. 1 at 105 MR-8. Qwest cleared 100% of CLEC of out of service reports within 24 hours. *Id.* at 104, MR-3. Similarly, Qwest cleared 100% of all trouble reports within 48 hours. *Id.*, MR-4.

(iii) Conditioning Loops

In September 2001, Qwest began reporting how well it conditioned loops, which is sometimes necessary to create 2-wire non-loaded loops. Region-wide in Zone 1, Qwest conditioned about 90% of its loops within the standard 15-day interval, and at an average interval of approximately 5 days. Ex. 2 at 166, OP-3 & OP-4. In Zone 2, Qwest conditioned up to 89% of such loops in an average interval under 10 days. *Id.* This performance was consistently around the ROC's 90% benchmark and exceeded the 16.5-day interval benchmark.

d. *ISDN Capable Loops*

(i) Installation of ISDN capable loops

Qwest receives very few requests for installation of ISDN capable loops in North Dakota. Therefore, the Commission will review Qwest's performance in providing such loops throughout its region. In each of the last four months, Qwest met over 95% of its installation commitments in Zone 1, and over 93% of its commitments in Zone 2. Ex. 2 at 142-143, OP-3. This was at parity with comparable retail performance. In both Zones, the average installation interval for CLEC loops continued to be significantly shorter for CLECs than for retail customers. *Id., OP-4.* When installations were delayed past the due date, CLEC customers received ISDN loops at parity with that provided to retail customers. *Id.*, OP-6A, OP-6B. Qwest's installations for CLECs have been of a consistently high quality, with over 90% of such loops not experiencing new installation trouble. Id. at 144, OP-5 & OP-5.

(ii) Repair of ISDN capable loops

The CLEC trouble rate in each of the months from January 2002 through April 2002 was less than 1.4%. This trouble rate was consistently at parity with retail troubles. *Id.* at 149, MR-8. Qwest performs timely and reliable repair of ISDN capable loops for CLECs in the limited instances when repairs were needed. In each of the last four months, Qwest cleared at least 98% of out of service troubles within 24-hours in Zone 1 and 100% of such troubles in Zone 2. *Id.* at 146-147, MR-3. Qwest also cleared 100% of all CLEC trouble reports within 48-hours every month in both zones. *Id.*, MR-4. The mean time to restore CLEC service was four hours or less in each month, which was consistently at parity with retail in both zones. *Id.*, MR-6.

e. DS-1 Capable Loops

(i) Installation of DS-1 Capable Loops

As little demand existed for DS-1 capable loops in North Dakota, the NDPSC will consider Qwest's regional performance in providing DS-1 capable loops. Qwest met at least 84% of such installation commitments in Zone 1 during the last four months. Ex. 2 at 135, OP-3. In Zone 2, Qwest met 72% or more of its commitments in each of the four months. *Id.* at 136, OP-3. In both zones, installations were usually provided at parity. *Id.* at 135-136, OP-3. Moreover, in both zones CLECs experienced a substantially shorter average installation interval for DS-1 loops than did Qwest retail customers. *Id.*, OP-4. Similarly, when delays in provisioning occurred, in both zones the average delay CLECs experienced was consistently shorter than that experienced by retail customers. *Id.*, OP-6A & OP-6B. In each month, new installation quality showed that over 92% of these complex circuits were provisioned without trouble and at parity with retail. *Id.* at 137, OP-5 & OP-5*.

(ii) Repair of DS-1 Capable Loops

The CLEC trouble rate for DS-1 loops was less than 4% in each of the last four months. Although the trouble rate for CLECs exceeded that for Qwest's retail customers, the margin of difference was slight and decreasing. *Id.* at 141, MR-8. Qwest consistently cleared in excess of 71% of trouble within four hours in both Zone 1 and Zone 2. *Id.* at 139-140, MR-5. This service has usually been at parity with retail. Moreover, in three of the four months in Zone 1 and all four months in Zone 2, the mean time to restore has been less than the four-hour restoration objective. *Id.*, MR-6. Although the mean time to restore DS-1 loops was sometimes not provided at parity, the difference in restoration was usually an hour or less.

f. ADSL Qualified Loops

(i) Installation of ADSL Qualified Loops

Qwest has provisioned a fair number of ADSL qualified loops in North Dakota. For the months of January 2002 through April 2002, Qwest met 100% of its CLEC installation commitments. Ex. 1 at 121, OP-3. This was well above the 90% benchmark. *Id.* Qwest also consistently met the six-day installation interval benchmark. *Id.*, OP-4. Only 1 of 49 ADSL loop installations had trouble over the last four months. *Id.* at 122, OP-5 & OP-5*.

(ii) Repair of ADSL Qualified Loops

Over the last four months, the average trouble rate for such CLEC loops was 2.4% or less, which was always at parity for comparable retail loops. *Id.* at 124, MR-8. Qwest cleared 100% of all CLEC troubles on time. *Id.* at 123, MR-3 & MR-4.

g. Line Sharing

(i) Installation of Line Sharing

No CLEC has yet ordered a shared loop in North Dakota. Region-wide, Qwest met over 99% of its installation commitments in each month from January 2002 though April 2002. Ex. 2 at 169, OP-3. Qwest's performance was above the ROC 95% benchmark in all four months. Qwest's performance for the installation interval, which ranged from 3.00 to 3.14 days, was better than the ROC's 3.3-day benchmark. *Id.*, OP-4. Over 97% of such lines were installed without trouble. *Id.* at 170, OP-5.

(ii) Repair of Line-Shared Loops

Over the last four months, the overall trouble rate for shared links was less than 2% and once reported troubles with "no trouble found" are excluded, always at parity with equivalent retail service. Ex 2 at 179, MR-8 & MR-8*. When trouble occurred, virtually all of nondispatched out-of-service troubles were cleared within 24 hours, and more than 92% of all troubles cleared within 48 hours. *Id.* at 177, MR-3 & MR-4. The mean time to restore these services was consistently less than 30 hours. *Id.* at 173, 175 & 177, MR-6. Nonetheless, the troubles cleared in 48 hours, and the mean time to restore was often outside of parity. As Qwest explained, line sharing is a unique service, as both voice and data are on the same circuit. As such, Qwest expects to receive a higher percentage of trouble reports for line sharing than for POTS alone, and many of these troubles are for other than an out-of-service situation. Over the four months, about 20% of the reported line-sharing troubles were for an out-of-service situation. For the retail comparable, however (which is an aggregate of residential and business POTS) over 50% of the troubles were out-of-service situations. Since out-of-service situations have a higher priority in the repair queue, a higher percentage of retail orders have a higher priority. Although Qwest cleared over 92% of such troubles each month, it has demonstrated why it cleared less troubles on line sharing than on Qwest retail.

h. Other Types of Unbundled Loops

In January 2002 through April 2002, North Dakota CLECs did not order virtually any unbundled nonloaded (4 wire) loops, DS1 capable loops or DS3 or higher capable loops. Qwest's regional performance, however, demonstrates that it stands ready to provision and repair such loops on a nondiscriminatory basis if and when CLECs order them.

Qwest's performance shows that Qwest is consistently meeting its unbundled loop obligations to CLECs in North Dakota. The Commission is satisfied that Qwest meets the requirements of checklist item 4.

5. Checklist Item 5 – Unbundled Transport.

As Qwest had virtually no demand for unbundled transport in North Dakota from January 2002 through April 2002, the NDPSC considered Qwest's regional performance data for checklist item 5.

a. Provision of DS-1 Dedicated Transport

In both Zones 1 and 2, Qwest met over 94% of its CLEC installation commitments, with an average interval of about nine days. *Ex. 2 at 187-188*, OP-3 & OP-4. This performance was usually at parity with retail performance. In the few circumstances when delays occurred, they were always at parity with retail. *Id.*, OP-6A & 6B. In every month, Qwest installed over 96% of such UDIT facilities without CLECs filing a trouble report. *Id.* at 189, OP-5.

b. Repair of DS-1 Dedicated Transport

The overall trouble rate for DS1 UDIT was less than 2% each month. *Id.* at 193, MR-8. In Zones 1 and 2, Qwest cleared CLEC troubles a high percentage of the time in four hours and in a manner comparable to its retail performance. *Id.* at 191-192, MR-5. Similarly, the mean time to restore these circuits was always two hours or less, and consistently at parity with retail service in both zones. *Id.*, MR-6.

c. Provision of DS-3 Dedicated Transport

As to UDITs above DS-1 levels, Qwest met 100% of its commitments in both Zones 1 and 2 in virtually every month from January 2002 to April 2002. *Id.* at 194-195,